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March 6, 1995

VIA FACSIMILE

To Distribution List

Re: AOL/WAIS

At the request of Miles Gilburne, attached is a revised, red-lined Letter of Intent in connection with the proposed acquisition of WAIS. The Letter is dated Wednesday, March 8, 1995. If the attached is acceptable, we will distribute an execution copy of this Letter of Intent, as well as the Nondisclosure Agreement and bridge loan documents, for execution by all parties.

On Tuesday, I will be out at a meeting all day and unable to access voicemail. In my absence, please contact Harry Boadwee of this office with any comments to the attached.

Best regards,


Mark C. Stevens

MCS/slr

Enclosure

cc: Harry Boadwee, Esq.

DISTRIBUTION LIST

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America On-Line, Inc.
(703) 506-1942

Letter of Intent

February 24 March 8, 1995

America Online, Inc., a Delaware corporation ("AOL") and Wide Area Information Servers, Inc., a California corporation ("WAIS"), wish to memorialize their present intention to enter into an agreement regarding a merger of WAIS with a wholly-owned subsidiary of AOL upon the following principal terms and conditions.

1. **Structure; Timing.** WAIS will merge with AOL's wholly-owned subsidiary pursuant to a mutually agreed upon Agreement and Plan of Reorganization (the "Agreement"). WAIS will be the surviving corporation. Execution of the Agreement is scheduled for the week of March 20, 1995. The transaction will be accounted for by the pooling of interests method of accounting, which treatment will be a condition to the closing of the transaction. The merger will be structured to be tax-free under Section 368(a)(2)(E) of the Internal Revenue Code.

2. **Effect of Merger; Conversion Ratio.** WAIS currently has 7,500,000 ~~7,525,000~~ shares of Common Stock outstanding, and ~~594,000~~ 591,375 shares of Common Stock issuable pursuant to options that will be vested on or prior to March 31, 1995, or ~~92.7%~~ 92.714% in outstanding shares and ~~7.3%~~ 7.286% in vested options. AOL will issue that the following number of shares of AOL Common Stock ~~which could be purchased for 92.7% multiplied by \$13 million, or \$12,051,000 (with AOL Common Stock valued for such purpose at \$65 per share (the "AOL Reference Price"))~~ to WAIS's shareholders in return for all outstanding shares of WAIS Common Stock (with the number of shares of AOL Common Stock to be issued in consideration of WAIS Common Stock to be referred to as the "AOL Closing Shares"); 157,613 shares (170,000 shares multiplied by 92.714%) if the AOL Closing Price (as defined below) is greater than or equal to \$75 per share; or 185,428 shares (200,000 shares multiplied by 92.714%) if the AOL Closing Price is less than \$75 per share. The AOL Closing Price shall be equal to the average of the closing price per share of AOL Common Stock, as quoted on the Nasdaq National Market and as reported in the Wall Street Journal during the five trading days ending on the trading day preceding the Closing Date. Proceeds will be divided among WAIS shareholders in proportion to the common share equivalents of their holdings. Appropriate adjustment will be made to the AOL Closing Shares in the event of any stock split, recapitalization, stock dividend or similar change in AOL's outstanding stock prior to the closing date of the transaction.

3. **Collar.** ~~The number of AOL Closing Shares may be adjusted depending on the average of the closing price per share of AOL Common Stock, as quoted on the Nasdaq National Market and as reported in the Wall Street Journal during the ten trading days ending on the trading day~~

~~proceeding the Closing Date (the "AOL Closing Price"). If the AOL Closing Price is greater than or equal to 85% and less than or equal to 115% of the AOL Reference Price, then the AOL Closing Shares shall remain unchanged. If the AOL Closing Price is less than 85% or more than 115% of the AOL Reference Price, then the number of AOL Closing Shares shall be adjusted ratably so that the AOL Closing Shares multiplied by the AOL Closing Price shall remain constant at 85% (if the AOL Closing Price is less than the AOL Reference Price) or 115% (if the AOL Closing Price is greater than the AOL Reference Price) of \$12,051,000. Notwithstanding the foregoing, if the AOL Closing Price is less than 85% of the AOL Reference Price, AOL will have the right in good faith to renegotiate the consideration to be paid and to terminate the agreement if mutual agreement on that point cannot be achieved.~~

4.3. Treatment of Options. WAIS options will be converted into AOL options for corresponding AOL Common Stock, with the number of shares and exercise price proportionally adjusted to give effect the conversion formula described above. There are currently ~~1,890,000~~ **1,908,000** options outstanding, and WAIS understands that any additional options to purchase WAIS Common Stock will be canceled at the closing and replaced by the options described under "Grant of Stock Options at Closing" below. Continuous employment with WAIS will be credited to an optionee for the purposes of determining the number of shares subject to exercise after the merger. The term, exercisability, vesting schedule and all other terms of the options will remain otherwise unchanged. That is, no options will be accelerated solely as a result of the merger. AOL will cause the shares of Common Stock issuable upon exercise of assumed options to be registered with the SEC on Form S-8, such that such shares will be freely ~~tradeable~~ **tradable**, subject to the volume and manner of sale restrictions imposed by Rule 144 on affiliates of AOL.

5.4. Post Merger Employment Benefits. Employees of WAIS who become employed by AOL after the merger will become eligible (within a reasonable period after the closing of the merger) to participate in the same employee benefit plans as are generally available to similarly situated employees of AOL.

6.5. Grant of Stock Options at Closing. Upon closing of the merger, the following options to purchase AOL Common Stock will be granted under AOL's standard employee equity plan (the shares issuable under which will be registered on Form S-8 at or prior to the Closing Date), in each case with an exercise price equal to the closing price of AOL Common Stock on the trading day immediately prior to ~~closing the Closing Date~~ **closing the Closing Date**:

- (i) **Brewster Kahle Option.** Mr. Kahle will receive an option to purchase shares with an aggregate exercise price of \$3,500,000. Such option will vest as to 1/2 of the shares on the second anniversary of the closing date, with an additional 1/4 of the shares vesting on the third and fourth anniversaries of the closing date.
- (ii) **Options for Current Employees.** Options to purchase shares with an aggregate exercise price of \$2,500,000 will be granted to other employees

of WAIS who are employed as of the date hereof and who remain employed at the closing date. Such options will have standard, ratable 4 year vesting, with the first vesting date at the first anniversary of the closing date. The allocation of these options will be specified by Mr. Kahle in the Agreement and will be subject to the reasonable approval of AOL.

(iii) Options for New Employees. Options to purchase shares with an aggregate exercise price of up to \$2,000,000 will be granted to other employees of WAIS who are hired after the date hereof and who are employed at the closing date. Such options will have standard, ratable 4 year vesting. The allocation of these options will be specified by Mr. Kahle from time to time prior to closing and will be subject to the reasonable approval of AOL.

7.6. Noncompetition Agreements. Mr. Kahle and other mutually agreed key employees to be identified in the Agreement, if any, will be requested to execute noncompete/ nonsolicitation agreements with a term equal to the longer of 2 years from closing and 1 year after termination of employment (but in no event longer than 3 years from closing). No separate consideration will be paid for the entry into such agreements, other than the issuance of shares and/or the assumption of options in the merger.

8.7. Securities Law Compliance: Resale Restrictions. AOL will issue the shares in the merger pursuant to the "private placement" exemption from registration under the Securities Act of 1933, and the shares received by WAIS shareholders in the merger will therefore be restricted securities within the meaning of Rule 144 and will not be eligible for resale under Rule 144 for a period of two years following the merger. AOL will grant the former WAIS shareholders piggyback registration rights on any public offerings by AOL or by other WAIS AOL shareholders during that two year period; provided that AOL agrees to afford the WAIS shareholders, as a group, the opportunity to register and sell that number of shares that will generate net proceeds of at least \$1,000,000 in the twelve months following the Closing Date. The pooling rules require that there be no sales by WAIS affiliates of their WAIS stock or AOL stock issued in exchange therefor for the period commencing 30 days prior to consummation of the merger and ending at such time as financial statements covering 30 days of combined operations of the two companies are publicly released (this is the "pooling lock up period"). WAIS affiliates will be required to acknowledge and agree in writing to the foregoing resale restrictions. AOL affiliates will be subject to similar restrictions.

9.8. Corporate Approval: Shareholder Pre-Approval. WAIS represents that its Board of Directors has authorized and approved the execution of this Letter of Intent. WAIS shareholder approval will be required at closing. WAIS and WAIS's officers and directors will use best efforts to cause the shareholders of WAIS to approve the merger and WAIS's directors will recommend that WAIS's shareholders approve the

merger. Mr. Kahle will agree to vote in favor of the merger at the time the Agreement is executed.

40 9. Representations; Escrow. Each party will make customary representations and warranties which will expire at the termination of the escrow, below. The Agreement will contain mutual indemnification of each party against breaches of the other's representations, warranties and covenants. An aggregate of 10% of the shares issuable to WAIS's shareholders ~~and vested option holders~~ will be held in escrow as security for WAIS's indemnity obligations. There will be no recoveries from escrow until aggregate claims exceed \$25,000, after which recovery will be from the first dollar. The escrow shall expire upon the earlier of twelve months after the merger or upon release of audited financial results of the combined company.

44 10. Due Diligence. AOL and its attorneys and accountants will have full access to the books and records of WAIS from the date hereof to complete a due diligence investigation of WAIS.

42 11. Closing Conditions; Covenants. Each party's obligations will be subject to customary closing conditions, including (i) those required to implement the deal terms described above, (ii) approval of the merger by 100% of WAIS's shares that are currently outstanding and approval of at least 99% of WAIS's shares that are outstanding on the Closing Date, and (iii) approval by the AOL Board of Directors. Closing will also be conditioned on the absence of any material adverse change in WAIS's assets, employee base or business. Closing will be scheduled to occur on or about March 29, 1995, and AOL, WAIS and Mr. Kahle will use diligent efforts to close by such date. Closing will also be conditioned on satisfactory completion of AOL's due diligence investigation. Customary pre-closing covenants will be included in the Agreement. Mr. Kahle will execute an agreement concurrently with the execution of the Agreement agreeing to vote his shares in favor of the transaction.

43 12. No-Shop Provision; Break Up Fee. WAIS agrees that, until March 29, 1995 or the earlier mutual abandonment of the transaction contemplated hereby, WAIS and Mr. Kahle will not, and will not authorize any officer or director of WAIS or any other person on its behalf to, solicit, encourage, negotiate or accept any offer from any party concerning: (i) the possible disposition of all or any substantial portion of WAIS's business, assets or capital stock by merger, sale or any other means or any other transaction that would involve a change in control of WAIS; or (ii) the sale of any equity or debt securities of WAIS. WAIS will promptly notify AOL in writing of any such inquiries or proposals. If WAIS merges with, or WAIS or its assets are acquired by, a company other than AOL or a wholly-owned subsidiary of AOL during a period of one year after the date hereof ~~based on any discussion~~, and if discussions with such company concerning such acquisition occur during the no-shop period, WAIS (or the acquiring company) will immediately pay AOL a the sum of \$5,000,000 \$3,000,000 and AOL will make no other claims against WAIS or its shareholders regarding this transaction. WAIS shall have no obligations under this Section if AOL unilaterally decides not to proceed with this transaction or causes it not to occur (other than as a result

of WAIS's breach of the Agreement or intentional failure to cause a condition of closing to occur). The Agreement will contain a section substantially identical to the foregoing.

14 13. Fees and Expenses. AOL will pay promptly after closing up to \$50,000 \$75,000 of the reasonable legal and accounting fees and disbursements actually incurred by WAIS in connection with the transaction.

15 14. Hart-Scott-Rodino Compliance. A Hart-Scott-Rodino Act filing will not be required with respect to the transaction.

16 15. Public Disclosure. WAIS will make no public disclosure of the negotiation of the merger without the prior written consent of AOL. AOL will make no public disclosure of the negotiation of the merger unless, in the opinion of its counsel, such disclosure is required by law. The parties agree to issue a joint press release upon signing of the Agreement. The parties will not make any other public announcement of this transaction without the other's prior written consent. WAIS agrees to take reasonable actions to avoid any trading in securities of AOL by WAIS's officers, directors, employees and agents that would be based on material nonpublic information that relates to the proposed merger or that was learned in the due diligence process.

17 16. Confidentiality. Each party acknowledges its continuing obligations under the Nondisclosure Agreement dated _____ of even date herewith with respect to matters disclosed during the negotiations and due diligence process contemplated hereby.

18 17. Broker's or Finder's Fees. AOL and WAIS acknowledge that they have not and will not enter into an agreement with any employees, officers, directors or outside contractors that would result in a broker or finder fee pertaining to the proposed merger.

19 18. Continuation of Business. From the date hereof until the closing, WAIS will preserve and operate its business in the ordinary course and will not enter into any transaction or agreement or take any action out of the ordinary course or enter into any transaction or make any commitment involving a license of intellectual property, an expense or capital expenditure by WAIS in excess of \$50,000 or a commitment of development resources that would extend beyond the closing date consistent with past practice, without AOL's written consent.

20 19. Counterparts. This Letter of Intent may be executed in counterparts and the counterparts together will constitute a single, fully-executed original.

21 20. Nonbinding Document. This Letter of Intent does not constitute an offer, is not binding (except for the "no shop" provisions of Section 12, the "public disclosure" provisions of Section ~~13~~ **15** and the "continuation of business" provisions of Section ~~19~~ **18**), and is not a definitive agreement. All rights and obligations of the parties are subject to execution of definitive mutually satisfactory agreements and obtaining all required corporate approvals. The parties will use diligent efforts to complete, execute and deliver

the Agreement promptly after the date hereof and to close the transaction within the time period set forth above.

This Letter of Intent is executed as of the date first set forth above.

AMERICA ONLINE, INC.

**WIDE AREA INFORMATION
SERVERS, INC.**

By: _____

By: _____

Its: _____

Its: _____

Brewster Kahle, individually

This redlined draft, generated by CompareRite - The Instant Redliner, shows the differences between -
original document : G:\DOC\MCS\A9003\00000\181904.5
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Deletions appear as overstruck text
Additions appear as bold+dbl underlined text